

SUBCHAPTER H : UTILITY SUBMETERING

§291.121. General Rules.

(a) Purpose and scope.

(1) The provisions of this section are intended to establish a comprehensive regulatory system to assure that the practices involving submetering, nonsubmetered master metered utility services and billing of dwelling units are just and reasonable to the tenant and the owner and to establish the rights and responsibilities of both the owner and tenant. The provisions of this section shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, religion, sex, or marital status.

(2) For purposes of enforcement, both utilities and owners are subject to enforcement pursuant to the Texas Water Code, which may involve civil penalties of up to \$5,000 for each offense and criminal penalties for willful and knowing violations.

(b) Application. The provision of this section shall apply to existing apartment houses, multiple use facilities or mobile home parks utilizing water, or wastewater submetering or existing apartment houses engaged in nonsubmetered master metered service as of the effective date of this section as well as those apartment houses, multiple use facilities and mobile home parks which engage in utility submetering or apartment houses which engage in nonsubmetered master metered services as defined by this section at any subsequent date.

(c) Severability clause. The adoption of this section will in no way preclude the Texas Natural Resource Conservation Commission from altering or amending it in whole or in part, or from requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion or upon application of any utility. If any provision of this section is held invalid, such invalidity shall not affect other provisions or application of this section which can be given effect without the invalid provision or application, and to this end, the provisions of this section are declared to be severable. The provisions of this section shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person.

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§291.122. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Apartment house - A building or buildings containing five or more dwelling units, all of which are rented primarily for nontransient use, with rental paid at intervals of one week or longer. Apartment house shall include residential condominiums, whether rented or owner occupied.

Billing unit - Gallon for water or wastewater service.

Commission - The Texas Natural Resource Conservation Commission.

Customer - The individual, firm, or corporation in whose name a master meter has been connected by the utility.

Dwelling unit - A room or rooms in an apartment house or condominium suitable for occupancy as a residence containing kitchen and bathroom facilities, or a mobile home in a mobile home park.

Hearing - Any proceeding based on an application, petition, complaint, or motion.

Master meter - A meter used to measure, for billing purposes, all water usage of an apartment house or mobile home park, including common areas, common facilities, and dwelling units therein.

Mobile home park - A property on which parking spaces are rented to mobile dwelling units primarily for nontransient use and for which rental is paid at intervals of one month or longer.

Month or monthly - The period between any two consecutive meter readings by the utility, either actual or estimated, at approximately 30-day intervals.

Multiple use facility - A commercial or industrial park, office complex or marina with five or more units which are occupied primarily for nontransient use and are rented at intervals of one month or longer.

Nonsubmetered master metered utility service - Water utility service that is master metered for the apartment house but not submetered, and wastewater utility service based on master metered water utility service.

Owner - For purposes of this subchapter, any owner, operator, or manager of any apartment house, mobile home park or multiple use facility engaged in water or wastewater utility submetering.

Tenant - A person who is entitled to occupy a dwelling unit to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement.

Utility metering - Individual apartment dwelling unit metering of water or wastewater utility service performed by a utility company.

Utility service - For purposes of this subchapter, utility service shall include water and wastewater service only.

Utility submetering - Individual dwelling unit metering of water or wastewater utility service performed by the owner.

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§291.123. Records and Reports.

(a) Either the owner or the owner's management company engaging or proposing to engage in utility submetering or billing for nonsubmetered master metered service must register with the commission 30 days prior to commencing utility submetering and provide the following information:

- (1) business address and business telephone of the owner or owner's management company;
- (2) date billing is to begin;
- (3) person to be contacted with regard to questions or complaints about service; and

(4) name and location of each apartment unit or mobile home park being submetered or nonsubmetered apartment unit.

(b) The owner shall maintain and make available for inspection by the tenant the following records during normal business hours:

(1) the billing from the utility to the owner for the current month and the 12 preceding months;

(2) the calculation of the average cost per billing unit, i.e., gallons for the current month and the 12 preceding months; For nonsubmetered master metered service the average cost per billing unit shall be equal to the charges for the utility service plus applicable tax, less any penalties charged by the utility plus applicable tax, less any penalties charged by the utility to the owner for disconnect, reconnect, late payment, or other similar service charges, divided by the total number of billing units;

(3) all submeter readings and tenant billings for the current month and the 12 preceding months; and

(4) all submeter test results for the current month and the 12 preceding months; and

(5) separate accounts for rental and utility billing, including date of transaction.

(c) Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling unit of the tenant at a time agreed upon by the owner and tenant.

(d) All records shall be made available to the commission upon request.

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§291.124. Calculation of Costs.

(a) Nonsubmetered master metered utility service costs shall be calculated based on metered billing units during the same billing period as that of the utility. The nonsubmetered master metered billing units shall be multiplied by the average cost per billing calculated according to §291.125(d) of this title (relating to Billing).

(b) The cost of nonsubmetered master metered utilities shall be the total charges for utility service to the apartment house less any penalties charged by the utility to the apartment owner for disconnect, reconnect, late payment, or other similar service charges.

§291.125. Billing.

(a) Rental agreement for submetering. All rental agreements between the owner and the tenants shall clearly state that the dwelling unit is submetered, that the bills will be issued on that basis, that water consumption or wastewater charges based on water consumption for all common areas and common facilities will be the responsibility of the owner and not of the tenant, and that any disputes relating to the computation of the tenant's bill and the accuracy of the submetering device will be between the tenant and the owner. Each owner shall provide a tenant, at the time the lease is signed, a copy of this section or a narrative summary approved by the executive director to inform the tenant of his rights and the owner's responsibilities under this section.

(b) Rental agreement for nonsubmetered master metered utility service. All rental agreements between the apartment owner and the tenants shall provide a clear written description of the method of the allocation of nonsubmetered master metered utilities for the apartment house. The method of allocation may be changed only after 90 days notice of such change to the tenants. The rental agreement for each apartment unit shall contain a statement of the average monthly bill for the previous calendar year for that apartment unit. Each owner shall provide a tenant, at the time a lease is signed, a copy of this section or a narrative summary approved by the executive director to inform the tenant of his rights and the owner's responsibilities under this section.

(c) Rendering and form of submetered bill.

(1) Bills shall be rendered for the same billing period as that of the utility, generally monthly, unless service is rendered for less than that period. Bills shall be rendered as promptly as possible following the reading of the submeters. The submeters shall be read within three days of the schedule reading date of the utility's master meter.

(2) The billing unit shall be that used by the utility in its billing to the owner such as thousand gallons or hundred cubic feet for water or wastewater submetering.

(3) The owner shall be responsible for determining that water consumption or sewer usage billed to any dwelling unit shall be only for that submetered and consumed within that unit.

(4) Submetered billings shall not be included as part of the rental payment or as part of billings for any other service to the tenant. A separate billing must be issued or, if issued on a multi-item bill, submetered billing information must be separate and distinct from any other charges on the bill and conform to information required in paragraph (7) of this subsection. The submetered bill must clearly state "submetered water" or "submetered wastewater" as applicable.

(5) The bill shall reflect only submetered usage. Utility consumption for all common facilities will be the responsibility of the owner and not of the tenant. Allocation of central systems for air conditioning, heating, wastewater and hot water are not prohibited by these sections as set forth in paragraph (d) of this section concerning non-submetered master meter utilities.

(6) The tenant's submeter bills shall be calculated in the following manner. After the water or wastewater bill is received from the utility, the owner shall divide the net total charges for water or sewer consumption, plus applicable tax, by the total number of billing units to obtain an average cost per billing unit. This average billing unit cost shall then be multiplied by each tenant's consumption to obtain the charge to the tenant. The average cost per billing unit shall not include any penalties charged by the utility to the owner for disconnect, reconnect, late payment, or other similar service charges.

(7) The tenant's water or wastewater submeter bill shall show all of the following information:

(A) the date and reading of the submeter at the beginning and at the end of the period for which the bill is rendered;

(B) the number of billing units metered;

(C) the computed rate per billing unit;

(D) the total amount due for water and/or wastewater used;

(E) a clear and unambiguous statement that the bill is not from the utility, which shall be named in the statement;

(F) the name and address of the tenant to whom the bill is applicable;

(G) the name of the firm rendering the submetering bill and the name or title, address, and telephone number of the person or persons to be contacted in case of a billing dispute;

(H) the date by which the tenant must pay the bill; and

(I) the name, address, and telephone number of the party to whom payment is to be made.

(d) Rendering and form of nonsubmetered master metered bill.

(1) Bills shall be rendered for the same billing period as that of the utility, generally monthly, unless service is rendered for less than that period.

(2) The allocation of nonsubmetered master metered utilities costs to tenants shall be based on one or a combination of the following methods:

(A) the total square footage living area of the dwelling unit as a percentage of the total square footage living area of all dwelling units of the apartment house and all heated and/or air conditioned common areas. This percentage shall be stated in the rental agreement for each dwelling unit; or

(B) the individually metered or submetered utility usage of the dwelling unit as a percentage of the sum of the individually metered or submetered usage of all dwelling units.

(3) Methods to allocate nonsubmetered master metered utilities to tenants, other than the method outlined in this section, must be approved by the executive director.

(4) Billings to the tenant shall not be included as part of the rental payment or as part of billings for any other service to the tenant. A separate billing must be issued or, if issued on a multi-item bill, utility billing information must be separate and distinct from any other charges on the bill.

(e) Due date. The due date of the bill shall not be less than 7 days after issuance. A bill for service is delinquent if not received by the party indicated on the bill by the due date. The postmark date, if any, on the envelope of the bill or on the bill itself shall constitute proof of the date of issuance. An issuance date on the bill shall constitute proof of the date of issuance if there is no postmark on the envelope or bill. If the due date falls on a holiday or weekend, the due date for payment purposes shall be the next work day after the due date.

(f) Disputed bills. In the event of a dispute between the tenant and the owner regarding any bill, the owner shall forthwith make such investigation as shall be required by the particular case, and report the results thereof to the tenant. The investigation and report shall be completed within 30 days from the date the tenant notified the owner of the dispute.

(g) Tenant access to submetering records. The tenants of any dwelling unit whose water consumption or wastewater based on water consumption is submetered shall be allowed by the owner to review and copy the master billing for the current month's billing period and for the 12 preceding months, and all submeter readings of the entire apartment house or mobile home park for the current month and for the 12 preceding months.

(h) Estimated submetering bills. Estimated bills shall not be rendered unless the meter has been tampered with or is out of order, and in such case the bill shall be distinctly marked as such.

(i) Overbilling and underbilling. If billings are found to be in error, the owner shall calculate a billing adjustment. If the tenant is due a refund, an adjustment shall be made for the entire period of the overcharges. If the tenant was undercharged, the owner may backbill the tenant for the amount which was underbilled for a period not to exceed six months. If the underbilling is \$25.00 or more, the owner shall offer to such tenant a deferred payment plan option, for the same length of time as that of the underbilling. Adjustments for usage by a previous tenant may not be backbilled to the current tenant.

(j) Payments. Unless clearly designated by the tenant, payments shall be applied first to rent and then to utilities.

(k) A one time penalty not to exceed 5.0% may be made on delinquent accounts. If such penalty is applied, the bill shall indicate the amount due if paid by the due date and the amount due if

the late penalty is incurred. No late penalty may be applied unless agreed to by the tenant in a written lease which states the exact dollar or percentage amount of such late penalty.

(l) A reconnect fee may be applied if service to the tenant is disconnected for non-payment of bills in accordance with §291.126(a) of this title (relating to Discontinuance of Service). Such reconnect fee shall be calculated based on the average actual cost to the owner for the expenses associated with the reconnection, but under no circumstance shall exceed \$10. No reconnect charge may be applied unless agreed to by the tenant in a written lease which states the exact dollar amount of such reconnect charge.

(m) The owner shall not impose any extra charges on the tenant over and above those charges which are billed by the utility to the owner. The bill may not include a deposit, late penalty, reconnect charge, or any other charges except as provided in paragraphs (k) and (l) of this section.

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§291.126. Discontinuance of Service.

(a) Disconnection for delinquent bills. Utility service may only be disconnected for nonpayment of utility bills. A tenant's utility service may be disconnected if a bill has not been paid within 12 days from the date of issuance and proper notice has been given. Proper notice shall consist of a separate mailing or hand delivery at least five days prior to a stated date of disconnection, with the words "termination notice" or similar language prominently displayed on the notice. The notice shall include the office or street address where a tenant can go during normal working hours to make arrangements for payment of the bill and for reconnection of service.

(b) Disconnection on holidays and weekends. Unless a dangerous condition exists which is related to the service provided, or unless the tenant requests disconnection, service shall not be disconnected on a day, or on a day immediately preceding a day, when personnel of the apartment house or mobile home park are not available for the purpose of making collections and reconnecting service.

§291.127. Submeters.

(a) Submeter requirements.

(1) Use of submeter. All water sold by an owner shall be charged for by meter measurements.

(2) Installation by owner. Unless otherwise authorized by the executive director, each owner shall be responsible for providing, installing, and maintaining all submeters necessary for the measurement of water or wastewater to its tenants.

(b) Submeter records. Each owner shall keep the following records.

(1) Submeter equipment record. Each owner shall keep a record of all of its submeters, showing the tenant's address and date of the last test.

(2) Records of submeter tests. All submeter tests shall be properly referenced in the submeter record required by this section. The record of each test made shall show the identifying number of the submeter, the standard meter and other measuring devices used, the date and kind of test made, by whom made, the error (or percentage of accuracy), and sufficient data to permit verification of all calculations.

(c) Submeter readings. In general, each meter shall indicate clearly the gallons for which charge is made to the tenant.

(d) Submeter tests on request of tenant. Each owner shall, upon the request of a tenant, and if the tenant so desires, in the tenant's presence or in that of the tenant's authorized representative, make a test of the accuracy of the tenant's submeter. The test shall be made during reasonable business hours at a time convenient to the tenant desiring to observe the test. If the submeter tests within the accuracy standards set by the American Water Works Association (AWWA) for water or wastewater meters, a charge of up to \$25 may be charged the tenant for making the test. However, if the submeter has not been tested within a period of one year, or if the submeter's accuracy is not within the appropriate accuracy standards, no charge shall be made to the tenant for making the test. Following completion of any requested test, the owner shall promptly advise the tenant of the results of the test.

(e) Bill adjustment due to submeter error. If any submeter is found not to be within the accuracy standards in subsection (d) of this section, proper correction shall be made of previous readings. An adjusted bill shall be rendered in accordance with §291.125(i) of this title (related to Billing). If a submeter is found not to register for any period, unless bypassed or tampered with, the owner may make a charge for units used, but not metered, for a period not to exceed one month based on amounts used under similar conditions during periods preceding or subsequent thereto, or during the corresponding period in previous years.

(f) Bill adjustment due to conversion. If, during the 90 day period preceding the installation of meters or submeters, an owner increases rental rates, and such increase is attributable to increased costs of utilities, then such owner shall immediately reduce the rental rate by the amount of such increase and shall refund all of such increase that has previously been collected within said 90 day period.

(g) Location of submeters. Submeters or cut-off valves in conjunction with the submeters shall be installed in accordance with the standards set by the AWWA unless otherwise approved by the executive director, and will be readily accessible for reading, testing, and inspection, where such activities will cause minimum interference and inconvenience to the tenant.

(h) Submeter testing facilities and equipment. Unless other reference standards and procedures are approved by the executive director the following standards and procedures must be followed.

(1) Reference standards. Each owner shall provide or have access to suitable indicating instruments as reference standards for insuring the accuracy of shop and portable instruments used for testing billing submeters.

(2) Testing of reference standards. Reference standards of all kinds shall be submitted once each year or on a scheduled basis approved by the executive director to a standardizing laboratory of recognized standing, for the purpose of testing and adjustment.

(3) Calibration of test equipment. All shop and portable instruments used for testing billing submeters shall be calibrated by comparing them with a reference standard at least once each year during the time such test instruments are being regularly used. Test equipment shall at all times be accompanied by a certified calibration card signed by the proper authority, giving the date when it was last certified and adjusted. Records of certifications and calibrations shall be kept on file in the office of the owner.

(i) Accuracy requirements for submeters. Submeters shall be adjusted as close as possible to the condition of zero error. The tolerances are specified only to allow for necessary variations.

(j) Submeter tests prior to installation. No submeter shall be placed in service unless its accuracy has been established. If any submeter is removed from actual service and replaced by another submeter for any purpose whatsoever, it shall be properly tested and adjusted before being placed in service again.

(k) Restriction. Unless otherwise provided by the executive director, no dwelling unit may be submetered unless all dwelling units are submetered.

(l) Same type meters required. All submeters which are served by the same master meter shall be of the same type.

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